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Hon. Alan Bersin, Chairman, and Sub-Committee Members
Interim Strong Mayor Sub-Committee
San Diego Charter Review Committee
202 C Street
San Diego, CA 92101

Re: Charter Provision Relating to Mayor as Executive Director of the Redevelopment Agency

Dear Chairman Bersin and Members of the Sub-Committee:

I am writing to express my views with respect to the ability of the San Diego City Charter to require that the Mayor act as the Executive Director of the Redevelopment Agency of the City of San Diego. I have expressed my opinion to the sub-committee previously at one of its meetings, however in view of the uncertainty expressed by some concerning this issue I felt it appropriate to put my views in writing. The views expressed herein are my personal views and not the opinion of my firm. I am expressing my opinion solely as an interested member of the public. My analysis is not exhaustive, but is meant to lay out some basic principles which lead to my conclusion.

The question presented is whether, and under what circumstances, the City Charter may provide that the Mayor be designated as the Executive Director of the Redevelopment Agency. The short answer is that it may because of the power of the City as a charter city; the relationship of the City to the Redevelopment Agency; the lack of any conflicting provision in state law; and the express acknowledgment of the procedural authority of a charter city under the state redevelopment law. The answer cannot be determined merely by saying that a redevelopment agency is a creature of state law; there is an intricate relationship between the functions of a charter city as a "city" and as a redevelopment agency.

Relevant Legal Principles

A. Charter City

San Diego is a charter city. *Mira Development Corp. v. City of San Diego,* 205 Cal. App. 3d 1201, 1213-1214 (1988). The charter is the supreme law of a charter city, subject only to conflicting provisions in the federal and state constitutions, and to conflicting provisions of

preemptive state law. *Domar Electric, Inc. v. City of Los Angeles,* 9 Cal. 4th 161, 170 (1995). A charter city has all power over municipal affairs, subject only to the clear and explicit limitations and restrictions contained in the charter. *Id.* at 171. Charter provisions are construed in favor of the exercise of the power over municipal affairs, and restrictions on a charter city's powers may not be implied. *Id.* City charters are not grants of power, but act as limitations, and a charter city may exercise all powers in regards to municipal affairs unless specifically and explicitly limited by its charter. *See generally Taylor v. Crane,* 24 Cal. 3d 442, 450 (1979); *City of Grass Valley v. Walkinshaw,* 34 Cal. 2d 595, 598-599 (1949). The exercise of power by a charter city is favored against any limitation or restriction on that exercise "which is not expressly stated in the charter. . . . So guided, reason dictates that the full exercise of the power is permitted except as clearly and explicitly curtailed. Thus in construing the city's charter *a restriction on the exercise of municipal power may not be implied.*" *City of Grass Valley,* 34 Cal 2d at 599 (emphasis added).

Article XI, sections 3 and 5 of the state constitution set forth the governing principles for a charter city. Section 3 provides in relevant part: "(a) For its own government, a county or city may adopt a charter by majority vote or its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised or repealed in the same manner. . . . "

Section 5 is more specific with regard to the powers of charter cities. It provides in relevant part: "(a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters . . . ." This power includes the power to regulate, control, and govern its internal affairs. *Hill v. The City of Long Beach,* 33 Cal. App. 4th 1684, 1692 (1995) (citing *Johnson v. Bradley,* 4 Cal. 4th 389, 395-396 (1992)).

The determination of whether a charter city may exercise a power is a multi-step analysis. *See generally Johnson,* 4 Cal. 4th at 398; *Fisher v. County of Alameda,* 20 Cal. App. 4th 120 (1993). First, it must be determined whether a conflict exists between the charter and the state constitution or state law, and the statutes should be construed if possible to avoid conflicts. *Johnson,* 4 Cal. 4th at 398. If no conflict exists, the inquiry ends. *Id.* at 399; *Fisher,* 20 Cal. App. 4th at 126. If a conflict exists as to the state constitution, the power may not be exercised. If a conflict exists as to other state law, it must be determined if the matter is one of statewide concern or a municipal affair. *Johnson,* 4 Cal. 4th at 399; *Fisher,* 20 Cal. App. 4th at 126. If it is a municipal affair, the power may be exercised. If it is of statewide concern, the statute must be reasonably related to that concern and narrowly tailored to limit incursion into legitimate municipal interests. The state legislature may not determine what is or is not a municipal affair (*Johnson,* 4 Cal. 4th at 405; *Fisher,* 20 Cal. App. 4th at 129), and mere expression that a matter is of statewide concern is not determinative (*Id.* at 128-129). There is no exact definition of what constitutes a municipal affair. *Committee of Seven Thousand v. Superior Court,* 45 Cal. 3d 491,

505 (1988); *Domar Electric, Inc. v. City of Los Angeles,* 41 Cal. App. 4th 810, 820 (1995). "The ultimate decision on the issue is necessarily based on an 'ad hoc inquiry' into the facts and circumstances surrounding the individual situation." *Id.,* quoting *California Fed. Savings & Loan Assn v. City of Los Angeles,* 54 Cal. 3d 1, 16 (1991). Our state supreme court has described "statewide concern" as "nothing more than a conceptual formula . . . , one that focuses on extramunicipal concerns . . . . demonstrably transcending identifiable municipal interests, ... [thus resisting] the invasion of areas which are of intramural concern only, ..." *CalFed.* at 17.

Simply put, the state cannot intrude upon the internal operating affairs of a charter city absent a compelling showing of a statewide concern. Even then, the intrusion must be narrowly tailored to address the concern without intruding upon municipal interests.

B. Redevelopment Law

The California Community Redevelopment Law ("CRL") states that in every city there exists a separate public entity, a redevelopment agency. Health & Safety Code § 33100. (all statutory references are to the Health & Safety Code.) In order to function, the city, acting through its legislative body or city council, must declare a need for redevelopment activity. § 33101. The CRL contains many provisions describing in detail the substantive powers of an agency. Some provide for the procedures by which an agency undertakes its functions. For example, a legislative body may declare itself to be the governing board of an agency. § 33200. The CRL, however, provides that a charter city may "enact its own procedural ordinance and exercise the power granted by [the CRL]." § 33204. The CRL thus acknowledges the special status of a charter city to adopt its own procedures.

Many of the functions of an agency require initial or concurrent action by the legislative body of a city acting as the city council, not the agency. Already mentioned is the requirement for the legislative body to declare the need for an agency in order to undertake redevelopment activity. The legislative body must declare the survey area of any redevelopment project (§ 33310), and the legislative body must adopt a redevelopment plan prepared by the agency (§ 33365). The legislative body must approve the budget for administrative expenses of an agency (§ 33611) and must approve certain expenditures of the agency using tax increment receipts (§33679). These are only a few examples.

In short, the relationship between a city and an agency (whether charter or general law) is intertwined, and an agency may not act in many cases without concurrent action by the legislative body of the city.

A Charter May Place Limitations On A City's Participation In Redevelopment Activity

It is proposed that the San Diego City Charter be amended to require that the Mayor act as Executive Director (at least where the City Council acts as the agency Board). The first step is to determine if such a provision is in conflict with the state law. In my opinion it is not. The CRL does provide that the agency may select its officers, however, the CRL also permits a charter city to adopt its own procedural ordinance. In my opinion the selection of officers is procedural because it does not address the substantive redevelopment power of an agency. There being no conflicting state law, the charter may so provide.

More importantly, however, if worded properly a charter provision would act not as a limitation on the agency, but upon the city's participation in redevelopment activity. For example there should be no question that a city charter could provide that a city will not undertake any redevelopment activity. This would present a limitation on the power of a city council to adopt the necessary ordinances or resolutions to implement redevelopment activity. If a charter may provide that a city cannot undertake redevelopment activity, it would seem to follow that a charter may permit the exercise of authority but under certain limitations. It would be in this context that a charter could provide, in essence, that a city council could not authorize redevelopment activity (through the adoption of the resolution of need, or the resolution declaring the adoption of a redevelopment plan) unless a particular officer of the city was designated as the executive director of the agency. This action would again be a limitation on the exercise of power by a city council (and not the agency board), something competent for a charter to contain.

In sum, because a city council, acting on behalf of a city, must undertake certain actions in order for redevelopment activity to take place, a charter may put limitations on the exercise of that authority by the city council. One such limitation could be that redevelopment activity could not be undertaken by the San Diego City Council unless the Mayor was designated as the Executive Director of the San Diego Redevelopment Agency. Such a limitation would not be on the Agency Board, but rather on the exercise of powers by the City.

I hope my analysis is helpful, and wish you the best in your endeavor.

Sincerely,

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